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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

ANI HOVHANNISYAN, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

VAXART, INC., ARMISTICE CAPITAL, LLC,  
CEZAR ANDREI FLOROIU, WOUTER W.  
LATOUR, M.D., STEVEN J. BOYD, and  
KEITH MAHER, M.D.,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

JURY TRIAL DEMAND

Plaintiff Ani Hovhannisyan (“Plaintiff”) alleges the following based on the investigation conducted by his counsel, which included, among other things: (i) documents filed publicly by Vaxart, Inc. (“Vaxart” or the “Company”) with the U.S. Securities and Exchange Commission (“SEC”) and other regulators; (ii) press releases, presentations, and media reports issued and disseminated by the Company; (iii) analyst and media reports concerning Vaxart; and (iv) other public information regarding the Company. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This securities class action is brought on behalf of all persons or entities that purchased or otherwise acquired Vaxart common stock between June 25, 2020 and July 25, 2020, inclusive (the “Class Period”). The claims asserted herein are alleged against Vaxart, certain of the Company’s current and former senior executives and directors (together, the “Vaxart Defendants”), and Armistice Capital LLC (“Armistice Capital”), Vaxart’s majority shareholder during the Class Period (collectively, “Defendants”), and arise under §§10(b), 20(a), and 20A of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

2. Vaxart is a small clinical-stage biotechnology company primarily focused on the development of oral recombinant vaccines based on its proprietary oral vaccine platform. Its vaccines are expected to be administered by tablet rather than by injection. Vaxart has approximately 15 employees and has never successfully brought a vaccine to market.

3. During the Class Period, Defendants engaged in a naked “pump and dump” scheme to inflate the share price of Vaxart by exploiting the COVID-19 crisis. As the global pandemic began to grip the world, Vaxart made a series of misleading statements to investors designed to create the impression that it was at the forefront of the effort to develop a COVID-19 vaccine and was a major player in the U.S. government’s effort to develop a vaccine, “Operation Warp Speed.”

4. The point of this scheme was to rapidly inflate the price of Vaxart stock and enrich Defendants, including Vaxart’s hedge fund owner, Armistice Capital, which acquired a majority interest in the Company in 2019. At the beginning of 2020, prior to the commencement of the

1 schemed alleged herein, Vaxart had a market capitalization of less than \$20 million and its stock  
2 traded around \$0.35 per share. As Defendants exploited the COVID-19 pandemic with a series of  
3 statements pumping Vaxart's vaccine efforts, the Company's share price skyrocketed to close at  
4 \$16.97 on July 14, 2020, or **48 times higher** than its stock price at the start of the year.

5 5. Defendants moved aggressively to exploit the stock inflation they created. On June  
6 8, 2020, shortly prior to the start of the Class Period, Vaxart changed the terms of its warrants  
7 agreements with Armistice Capital, making it easier for the hedge fund to rapidly acquire nearly  
8 21 million shares at prices as low as \$0.30 a share.

9 6. Then, on June 25, 2020, Vaxart issued an announcement claiming that it had signed  
10 a letter of intent with another company that might help it mass-produce a COVID-19 vaccine.  
11 Vaxart's shares nearly doubled that day.

12 7. The next day, June 26, 2020, Vaxart issued a misleading press release that claimed  
13 Vaxart had been selected for Operation Warp Speed. Its shares instantly doubled again. Beginning  
14 **the same day**, and continuing through June 29, 2020, Armistice Capital exercised its warrants to  
15 acquire to buy nearly 21 million Vaxart shares for either \$0.30 or \$1.10 a share – purchases it would  
16 not have been able to make as quickly had its agreement with Vaxart not been modified weeks  
17 earlier.

18 8. Armistice Capital then immediately sold the shares at prices from \$6.58 to \$12.89 a  
19 share. The hedge fund's profits were immense: more than \$197 million.

20 9. Then, on July 25, 2020, *The New York Times* published an article entitled, "Corporate  
21 Insiders Pocket \$1 Billion in Rush for Coronavirus Vaccine." Among other things, the article  
22 revealed that: (i) Vaxart had not been selected by the U.S. government to produce a COVID-19  
23 vaccine as part of Project Warp Speed; (ii) the U.S. government did not have a funding agreement  
24 with Vaxart; (iii) some officials at the Department of Health and Human Services have grown  
25 concerned about whether companies, including Vaxart, are trying to inflate their stock prices by  
26 exaggerating their roles in Operation Warp Speed; and (iv) Vaxart's hedge fund owner had been  
27 engaging in highly questionable transactions, including the June 8, 2020 change to its warrants and  
28 subsequent sales of enormous amounts of stock.

10. In response to this news, the price of Vaxart shares fell 11% on July 27, 2020.

**JURISDICTION AND VENUE**

11. The claims asserted herein arise under and pursuant to §§10(b), 20(a), and 20A of the Exchange Act (15 U.S.C. §§78j(b), 78t(a), and 78t-1) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

12. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1331.

13. Venue is proper in this District pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b). Vaxart maintains its headquarters in this District.

14. In connection with the acts, conduct, and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the U.S. mail, interstate telephone communications, and facilities of national securities markets.

**PARTIES**

15. Plaintiff Ani Hovhannisyan purchased Vaxart common stock at artificially inflated prices during the Class Period, as reflected in his certification submitted herewith, and was damaged as a result of the violations of the federal securities laws alleged herein.

16. Defendant Vaxart is a Delaware corporation with its corporate headquarters in South San Francisco, California. Vaxart purports to be a clinical-stage biotechnology company primarily focused on the development of oral recombinant vaccines based on its proprietary oral vaccine platform. It started trading on the NASDAQ under the ticker symbol “VXRT” on February 13, 2018, after a reverse merger with publicly traded Aviragen Therapeutics, Inc. Vaxart is a small company. As of December 31, 2019, it had 14 full-time employees, and only seven were engaged in research and development (“R&D”).

17. Defendant Cezar Andrei Floroiu (“Floroiu”) has served as a director of Vaxart since April 2020. In June 2020, Vaxart appointed Floroiu as its new Chief Executive Officer (“CEO”).

18. Defendant Wouter W. Latour, M.D. (“Latour”) served as Vaxart’s President and Chief Executive Officer from February 2018 to June 2020. He has also served as a director from February 2018 to the present. He has served as Chairman of the Board since December 2019.

19. Defendant Steven J. Boyd (“Boyd”) has served as a director of Vaxart since October 2019. Since 2012, Boyd has also served as the Chief Investment Officer of Defendant Armistice Capital. Boyd is Armistice Capital’s Managing Member and its founder, principal, and owner.

20. Defendant Keith Maher, M.D. (“Maher”) has served as a director of Vaxart since October 2019. He has also served as Armistice Capital’s Managing Director since 2019.

21. Floroiu, Latour, Boyd, and Maher are collectively referred to herein as the “Individual Defendants.”

22. Defendant Armistice Capital is a hedge fund incorporated in Delaware and based in New York, New York. At all relevant times, Armistice Capital conducted business in California. As of December 31, 2019, Armistice Capital beneficially owned approximately 52% of the voting power of Vaxart’s outstanding shares of common stock and Vaxart was thus a “controlled company” within the meaning of the applicable NASDAQ listing rules at the time. Thereafter, Vaxart issued common stock to other investors during the first quarter of 2020. As of April 9, 2020, Armistice Capital held over 25 million shares of Vaxart common stock, constituting 34.5% of Vaxart’s total outstanding shares. In June 2020, Armistice Capital acquired approximately 21 million shares through its warrants, which were subsequently sold for a profit of \$197 million.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

23. Vaxart purports to be a vaccine developer. However, it has never brought a vaccine to market; and none of its vaccine programs have advanced beyond phase 2 clinical trials so far. As of December 31, 2019, the Company had seven employees working in R&D.

24. By the end of 2019, Armistice Capital owned 52% of Vaxart, after purchasing approximately just \$2.5 million of the Company’s common stock.

25. In addition to purchasing common stock, Armistice Capital also obtained common warrants for the purchase of Vaxart stock: (i) a Common Stock Purchase Warrant, issued as of

1 April 11, 2019, to purchase 4,090,909 shares of common stock of the Company at an exercise price  
2 of \$1.10 per share (the “\$1.10 Warrant”); and (ii) a Common Stock Purchase Warrant, issued as of  
3 September 30, 2019, to purchase 16,666,667 shares of common stock at an exercise price of \$0.30  
4 per share (the “\$0.30 Warrant” and together, the “Original Warrants”).<sup>1</sup>

5 26. In early 2020, the worldwide outbreak of COVID-19 quickly became a global  
6 pandemic. As a result, the development of a vaccine to prevent the spread of COVID-19 became  
7 a priority for the U.S. government, as well as other nations around the world.

8 27. On January 31, 2020, Vaxart announced that it was initiating a program to develop  
9 a COVID-19 vaccine candidate.

10 28. On May 15, 2020, the President Trump formally announced “Operation Warp  
11 Speed,” a “national program to accelerate the development, manufacturing, and distribution of  
12 Covid-19 vaccines, therapeutics, and diagnostics (medical countermeasures).”

13 29. So far, seven companies, Vaxart’s COVID-19 vaccine competitors, have received  
14 hundreds of millions or even over a billion dollars of federal funding to develop their vaccines.  
15 Vaxart has not received any funding from Operation Warp Speed.

16 30. On June 8, 2020, without stating a reason, the Company and Armistice Capital  
17 entered into amendments to the Original Warrants (the “Warrant Amendments”). The Warrant  
18 Amendments increased the beneficial ownership limitation in those instruments from 4.99%, in the  
19 case of the \$1.10 Warrant, and 9.99%, in the case of the \$0.30 Warrant, to 19.99% in each,  
20 effectively allowing them to be exercised at any time. The Warrant Amendments also removed the  
21 requirement to provide 60 days’ notice to the Company of an increase in the beneficial ownership  
22 limitation. All other terms of the Original Warrants remained in full force and effect.

23 31. Also on June 8, 2020, Vaxart modified its 2019 Equity Incentive Plan and increased  
24 the number of shares of common stock reserved for issuance thereunder by 6,400,000 shares to  
25 8,000,000 shares. Options granted to directors under the 2019 Equity Incentive Plan were “spring-  
26 loaded,” given the upcoming Operation Warp Speed announcement.

27  
28 <sup>1</sup> These agreements were with an affiliate, Armistice Capital Master Fund, Ltd.

32. As of June 14, 2020, Floroiu was appointed CEO of Vaxart. Under Floroiu's contract, his salary is \$400,000. In addition, his "Performance-Based" stock options for 900,000 Vaxart shares vest in three tranches once the stock price hits and maintains \$5.00 per share, then \$7.50 per share, and then \$10.00 per share.

33. On June 26, 2020, taking full advantage of the Warrant Amendments, as well as the false and misleading statements described below in ¶¶36-37, Armistice Capital exercised all of its warrants to buy 20.8 million shares of Vaxart at the respective exercise prices, which were far below market price.

34. Then, between June 26 and June 29, 2020 (two trading days), Armistice Capital sold 27.6 million Vaxart shares, reducing its overall beneficial ownership in Vaxart from 29% to 0.2% and reaping profits of approximately \$197 million, a return of nearly 79 times its investment in less than a year and with no vaccine in sight.

**Materially False and Misleading Statements Issued During the Class Period**

35. In furtherance of their scheme to inflate Vaxart's stock price and enrich Armistice Capital and the Individual Defendants, Defendants made materially false and misleading statements and omissions.

36. On June 25, 2020, before the market opened, Vaxart issued a press release announcing that it had signed a memorandum of understanding ("MOU") with Attwill Medical Solutions Sterilflow, LP for the large scale manufacturing of a potential COVID-19 vaccine. The press release touted that the MOU "enable[ed] production of a billion doses Covid-19 doses per year[.]" On this news, Vaxart's stock price skyrocketed 98% in one day, from a close price of \$3.19 on June 24, 2020, to a close price of \$6.26 on June 25, 2020.

37. The next day, June 26, 2020, before the market opened, Vaxart issued another press release entitled, "Vaxart's Covid-19 Vaccine Selected for the U.S. Government's Operation Warp Speed" (the "Warp Speed Announcement").

38. The same day that the Warp Speed Announcement was made, President Trump also made an announcement regarding Operation Warp Speed and news channels reported on his remarks with headlines such as "Operation Warp Speed promises billions for vaccines" (CNN).

39. The Warp Speed Announcement caused Vaxart's stock price to increase 28% from its close price of \$6.26 on June 25, 2020, to a close price of \$8.04 on June 26, 2020.

40. The statements referenced in ¶¶36-37, above, were materially false and/or misleading because they misrepresented and failed to disclose that: (i) Vaxart was not a true "selection" of Operation Warp Speed because it was not receiving funding; and (ii) Vaxart was greatly exaggerating the state of its COVID-19 vaccine development in order to pump its share price and allow Armistice Capital to reap hundreds of millions of dollars in profits.

### **The Truth Comes Out**

41. On July 25, 2020, *The New York Times* published an article entitled, "Corporate Insiders Pocket \$1 Billion in Rush for Coronavirus Vaccine." The article reported that Vaxart's press release brazenly claimed that "Vaxart's Covid-19 Vaccine Selected for the U.S. Government's Operation Warp Speed," while "the reality is more complex":

Vaxart's vaccine candidate was included in a trial on primates that a federal agency was organizing in conjunction with Operation Warp Speed. But Vaxart is not among the companies selected to receive significant financial support from Warp Speed to produce hundreds of millions of vaccine doses.

"The U.S. Department of Health and Human Services has entered into funding agreements with certain vaccine manufacturers, and we are negotiating with others. Neither is the case with Vaxart," said Michael R. Caputo, the department's assistant secretary for public affairs. "Vaxart's vaccine candidate was selected to participate in preliminary U.S. government studies to determine potential areas for possible Operation Warp Speed partnership and support. At this time, those studies are ongoing, and no determinations have been made."

42. The article further explained that, "Vaxart's vaccine candidate was included in a trial on primates that a federal agency was organizing in conjunction with Operation Warp Speed. But Vaxart is not among the companies selected to receive significant financial support from Warp Speed to produce hundreds of millions of vaccine doses."

43. The article also reported that "[s]ome officials at the Department of Health and Human Services have grown concerned about whether companies including Vaxart are trying to inflate their stock prices by exaggerating their roles in Warp Speed [and the Department] has relayed those concerns to the Securities and Exchange Commission." The article also discussed



1 how Vaxart's hedge fund owner had been engaged in highly questionable transactions, including  
2 the June 8, 2020 change to its warrants and subsequent sales of enormous amounts of stock.

3 44. On this news, the price of Vaxart stock dropped over 11% from its previous close  
4 price on July 23, 2020, of \$13.85 to a close price of \$12.29 on July 27, 2020, the next trading day.

5 45. As a result of Defendants' wrongful acts and omissions, and the precipitous decline  
6 in the market value of the Company's common stock, Plaintiff and the other Class (defined below)  
7 members suffered significant losses and damages.

8 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

9 46. Plaintiff brings this action as a class action pursuant to Rules 23(a) and (b)(3) of the  
10 Federal Rules of Civil Procedure on behalf of a class consisting of all those who purchased or  
11 otherwise acquired Vaxart common stock during the Class Period and were damaged upon the  
12 revelation of the alleged corrective disclosure (the "Class"). Excluded from the Class are the  
13 Defendants named herein, the officers and directors of the Company, at all relevant times, members  
14 of their immediate families and their legal representatives, heirs, successors, or assigns, and any  
15 entity in which Defendants have or had a controlling interest.

16 47. The members of the Class are so numerous that joinder of all members is  
17 impracticable. Throughout the Class Period, Vaxart common stock was actively traded on the  
18 NASDAQ exchange. While the exact number of Class members is unknown to Plaintiff at this  
19 time, and can be ascertained only through appropriate discovery, Plaintiff believes that there are  
20 hundreds or thousands of members in the proposed Class. Record owners and other members of  
21 the Class may be identified from records maintained by Vaxart or its transfer agent and/or  
22 NASDAQ and may be notified of the pendency of this action by mail, using the form of notice  
23 similar to that customarily used in securities class actions.

24 48. Plaintiff's claims are typical of the claims of the members of the Class, as all  
25 members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal  
26 law that is complained of herein.

1           49. Plaintiff will fairly and adequately protect the interests of the members of the Class  
2 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has  
3 no interests antagonistic to or in conflict with those of the Class.

4           50. Common questions of law and fact exist as to all members of the Class and  
5 predominate over any questions solely affecting individual members of the Class. Among the  
6 questions of law and fact common to the Class are:

7                   (a) whether the federal securities laws were violated by Defendants' acts as  
8 alleged herein;

9                   (b) whether statements made by Defendants to the investing public during the  
10 Class Period misrepresented material facts about the business, operations, and management  
11 of Vaxart;

12                   (c) whether the Individual Defendants caused Vaxart to issue false and  
13 misleading statements during the Class Period;

14                   (d) whether Defendants acted knowingly or recklessly in issuing false and  
15 misleading statements;

16                   (e) whether the prices of Vaxart common stock during the Class Period were  
17 artificially inflated because of the Defendants' conduct complained of herein; and

18                   (f) whether the members of the Class have sustained damages and, if so, what  
19 is the proper measure of damages.

20           51. A class action is superior to all other available methods for the fair and efficient  
21 adjudication of this controversy since joinder of all members is impracticable.

22           52. Furthermore, as the damages suffered by individual Class members may be relatively  
23 small, the expense and burden of individual litigation make it impossible for members of the Class  
24 to individually redress the wrongs done to them. There will be no difficulty in the management of  
25 this action as a class action.

26                                   **PRESUMPTION OF RELIANCE**

27           53. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-  
28 on-the-market doctrine in that:

1 (a) Defendants made public misrepresentations or failed to disclose material  
2 facts during the Class Period;

3 (b) the omissions and misrepresentations were material;

4 (c) Vaxart common stock is traded in an efficient market;

5 (d) the Company's common stock is liquid and traded with moderate to heavy  
6 volume during the Class Period;

7 (e) the Company's common stock traded on the NASDAQ exchange in the  
8 United States;

9 (f) the Company was covered by securities analysts;

10 (g) the misrepresentations and omissions alleged would tend to induce a  
11 reasonable investor to misjudge the value of the Company's common stock; and

12 (h) Plaintiff and members of the Class purchased, acquired, and/or sold Vaxart  
13 common stock between the time the Defendants failed to disclose or misrepresented  
14 material facts and the time the true facts were disclosed without knowledge of the omitted  
15 or misrepresented facts.

16 54. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a  
17 presumption of reliance upon the integrity of the market.

18 55. Alternatively, Plaintiff and the members of the Class are entitled to the presumption  
19 of reliance established by the Supreme Court in *Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S.  
20 128 (1972), as Defendants omitted material information in their Class Period statements in violation  
21 of a duty to disclose such information, as detailed above.

22 **COUNT I**

23 **Violations of §10(b) of the Exchange Act and Rule 10b-5  
(Against All Defendants)**

24 56. Plaintiff repeats and realleges each and every allegation contained above as if fully  
25 set forth herein.

26 57. This Count is asserted against Defendants and is based upon §10(b) of the Exchange  
27 Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

1           58. During the Class Period, Defendants engaged in a plan, scheme, conspiracy, and  
2 course of conduct pursuant to which they knowingly or recklessly engaged in acts, transactions,  
3 practices, and courses of business that operated as a fraud and deceit upon Plaintiff and the other  
4 members of the Class; made various untrue statements of material facts and omitted to state  
5 material facts necessary in order to make the statements made, in light of the circumstances under  
6 which they were made, not misleading; and employed devices, schemes, and artifices to defraud in  
7 connection with the purchase and sale of securities. Such scheme was intended to, and, throughout  
8 the Class Period, did: (i) deceive the investing public, including Plaintiff and the other Class  
9 members, as alleged herein; (ii) artificially inflate and maintain the market price of Vaxart  
10 securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire  
11 Vaxart securities at artificially inflated prices. In furtherance of this unlawful scheme, plan, and  
12 course of conduct, Defendants, and each of them, took the actions set forth herein.

13           59. Pursuant to the above plan, scheme, conspiracy, and course of conduct, each of the  
14 Defendants participated, directly or indirectly, in the preparation and/or issuance of the annual  
15 reports, SEC filings, press releases, and other statements and documents, as described above,  
16 including statements made to securities analysts and the media, that were designed to influence the  
17 market for Vaxart securities. Such reports, filings, releases, and statements were materially false  
18 and misleading in that they failed to disclose material adverse information and misrepresented the  
19 truth about Vaxart's business and operations.

20           60. By virtue of their positions at Vaxart, Defendants had actual knowledge of the  
21 materially false and misleading statements and material omissions alleged herein and intended  
22 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants  
23 acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose  
24 such facts as would reveal the materially false and misleading nature of the statements made,  
25 although such facts were readily available to Defendants. Said acts and omissions of Defendants  
26 were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew  
27 or recklessly disregarded that material facts were being misrepresented or omitted, as described  
28 above.

1           61. The Individual Defendants and Armistice Capital are liable both directly and  
2 indirectly for the wrongs complained of herein. Because of their positions of control and authority,  
3 the Individual Defendants and Armistice Capital were able to, and did, directly or indirectly, control  
4 the content of the statements of Vaxart. As officers and/or directors of a publicly held company or  
5 controlling shareholder, the Individual Defendants and Armistice Capital had a duty to disseminate  
6 timely, accurate, truthful, and complete information with respect to Vaxart's business and  
7 capabilities. As a result of the dissemination of the aforementioned false and misleading public  
8 statements, the market price of Vaxart common stock was artificially inflated throughout the Class  
9 Period. In ignorance of the adverse facts concerning Vaxart's business, which were concealed by  
10 Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Vaxart  
11 common stock at artificially inflated prices and relied upon the price of the securities, integrity of  
12 the market for the securities, and/or statements disseminated by Defendants and were damaged  
13 thereby.

14           62. During the Class Period, Vaxart common stock was traded on an active and efficient  
15 market. Plaintiff and the other members of the Class, relying on the materially false and misleading  
16 statements described herein, which the Defendants made, issued, or caused to be disseminated, or  
17 relying upon the integrity of the market, purchased or otherwise acquired Vaxart stock at prices  
18 artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the  
19 Class known the truth, they would not have purchased or otherwise acquired said securities, or  
20 would not have purchased or otherwise acquired them at the inflated prices that were paid. At the  
21 time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Vaxart  
22 common stock was substantially lower than the prices paid by Plaintiff and the other members of  
23 the Class. The market price of Vaxart common stock declined sharply upon public disclosure of  
24 the facts alleged herein to the injury of Plaintiff and Class members.

25           63. By reason of the conduct alleged herein, Defendants have knowingly or recklessly,  
26 directly or indirectly, violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

27           64. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the  
28 other members of the Class suffered damages in connection with their respective purchases,

1 acquisitions, and sales of the Company's stock during the Class Period, upon the disclosure that  
2 the Company had been disseminating misrepresented financial statements to the investing public.

3 **COUNT II**

4 **Violations of §20(a) of the Exchange Act  
(Against the Individual Defendants and Armistice Capital)**

5 65. Plaintiff repeats and realleges each and every allegation contained above as if fully  
6 set forth herein.

7 66. This Claim is brought against the Individual Defendants and Armistice Capital for  
8 control person liability under §20(a) of the Exchange Act.

9 67. During the Class Period, the Individual Defendants and Armistice Capital  
10 participated in the operation and management of Vaxart and conducted and participated, directly  
11 and indirectly, in the conduct of Vaxart's business affairs. Because of their senior positions at  
12 and/or control of the Company, the Individual Defendants and Armistice Capital knew the truth  
13 about Vaxart's business and the scheme to artificially inflate the Company's stock price.

14 68. As officers and/or directors of a publicly owned company, the Individual  
15 Defendants had a duty to disseminate accurate and truthful information, with respect to Vaxart's  
16 business, and promptly correct any public statements issued by Vaxart that had become materially  
17 false or misleading. Because of its control over Vaxart as majority shareholder, Armistice Capital  
18 also owed this duty.

19 69. Because of their position of control and authority, as senior directors or officers or  
20 as controlling shareholder, the Individual Defendants and Armistice Capital were able to, and did,  
21 control the contents of the various press releases and public filings that Vaxart disseminated in the  
22 marketplace during the Class Period concerning the Company's business and capabilities.  
23 Throughout the Class Period, the Individual Defendants and Armistice Capital exercised their  
24 power and authority to cause Vaxart to engage in the wrongful acts complained of herein. The  
25 Individual Defendants and Armistice Capital, therefore, were "controlling persons" of Vaxart  
26 within the meaning of §20(a) of the Exchange Act. In these capacities, the Individual Defendants  
27 and Armistice Capital participated in the unlawful conduct alleged herein that artificially inflated  
28 the market price of Vaxart common stock.

70. By reason of the above conduct, the Individual Defendants and Armistice Capital are liable pursuant to §20(a) of the Exchange Act for the violations committed by Vaxart.

**COUNT III**  
**Violations of §20A of the Exchange Act**  
**(Against Armistice Capital and Steven Boyd)**

71. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

72. This Claim is brought against Armistice Capital and its principal, Boyd, under §20A of the Exchange Act, 15 U.S.C. §78t-1.

73. Armistice Capital knew, recklessly disregarded, or should have known that it issued material, adverse non-public information and that it owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to Vaxart to keep this information confidential.

74. Nevertheless, while in possession of this material, non-public adverse information, Armistice Capital sold approximately 27.6 million shares of Vaxart.

75. By virtue of the foregoing, Armistice Capital, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the U.S. mails, or a facility of a national securities exchange, directly or indirectly:

(a) employed devices, schemes, or artifices to defraud;

(b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices, or courses of business that operated, or would have operated, as a fraud or deceit upon persons.

76. Armistice Capital and Boyd have thereby violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and SEC Rule 10b-5, 17 C.F.R. §240.10b-5.

77. By virtue of the foregoing, Armistice Capital and Boyd are jointly and severally liable to Plaintiff and the Class for Armistice Capital's insider sales pursuant to §20A of the Exchange Act, 15 U.S.C. §78t-1.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Fed. R. Civ. P. 23 and certifying Plaintiff as Class Representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class pre- and post-judgment interest, as well as reasonable attorneys' fees, expert fees, and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

DATED: September 1, 2020

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